

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Petition for Redetermination under the Sales and Use Tax Law of
LEONARD EUGENE PERRY

Appearances:

For Petitioner: Mr. Leonard Perry
Mr. Kevin Kelley
Attorney

For Appeals Section: Ms. Susan Wengel
Senior Tax Counsel

*For Sales and Use
Tax Department:* Ms. Janice Thurston
Senior Tax Counsel

MEMORANDUM OPINION

This opinion considers the merits of a petition for redetermination in the amount of \$4,886.87 in tax for the period January 1, 1993 through June 30, 1996. The Board heard this matter on March 17, 1999, in Sacramento, California.

Petitioner is a sole proprietor engaged in the business of supplying biological products and services to the dairy industry. In providing these products and services, petitioner purchased lagoon inoculants from an out-of-state vendor. These inoculants, more specifically three products called M.S. 2.5, LG 54 XTRA and M.S. 2.2, are substances used to break down solids and improve the fertilizer quality of manure. The inoculants are applied to manure wastewater held by dairy farmers in lagoons. After treatment the wastewater is drained off and used to irrigate fields. The solid matter at the bottom of the lagoon is dried and used by the dairy farmers as fertilizer on their fields.

The Sales and Use Tax Department (Department) concluded that petitioner was liable for use tax with respect to the lagoon inoculants that he applied to the dairy farmers' lagoons as part of his service business. The Department further concluded that whenever the lagoon inoculants were sold directly to the dairy farmers, the sale was subject to sales tax. It was the Department's position that the lagoon inoculants were purchased primarily as a catalyst to improve the quality of the cow manure as a fertilizer.

Petitioner contends that the written testimony of Thomas T. Yamashita, who has a Ph.D. in Plant Pathology from the University of California, Davis, supports the position that all three products are commercial fertilizers.

Revenue and Taxation Code section 6358(d) provides that there are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of fertilizer to be applied to land the products of which are to be used as food from human consumption. The California Code of Regulations, title 18, section 1588(b) provides the definition of the term “fertilizer.” This definition includes commercial fertilizers which are further defined in the Food and Agriculture Code section 14522. This statute provides that “commercial fertilizer” means any substance which contains 5 percent or more of nitrogen, available phosphoric acid, or soluble potash, singly or collectively, which is distributed in this state for promoting or stimulating plant growth.

OPINION

Based on the written testimony of Thomas T. Yamashita, we conclude that M.S. 2.5, LG 54 XTRA and M.S. 2.2 by virtue of 5.5 percent levels of the essential elements, meet the definition of commercial fertilizer as set out in the Food and Agricultural Code. The petition is granted.

Done at Sacramento, California, this 13th day of May, 1999.

Johan Klehs, Chairman
Dean F. Andal, Member
Claude Parrish, Member
John Chiang, Member
Kathleen Connell, Member